IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JOHN TAYLOR, Plaintiff, v. B. ONEY, JOHN WALSH, JOE HUDSON, BETTY BURRIS, and ROBERT SNYDER, Defendants.	)	Civ. No. 00-557-SLR

John Taylor, Delaware Correction Center, Smyrna, Delaware. Pro se Plaintiff.

Richard W. Hubbard, Esquire of Department of Justice, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: March 24, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On June 8, 2001, John Taylor, a pro se plaintiff proceeding in forma pauperis, filed the present action pursuant to 42 U.S.C. § 1983 against B. Oney, John Walsh, Joe Hudson, Betty Burris, and Robert Snyder (collectively, "defendants")[1] alleging that prison officials interfered with his legal mail in violation of the First, Sixth, and Fourteenth Amendments. (D.I. 1, 3) On August 26, 2003, defendants denied the allegations contained in plaintiff's complaint and asserted various affirmative defenses including immunity, the statute of limitations, failure to exhaust administrative remedies, and contributory negligence. (D.I. 15) The court has jurisdiction over the instant suit pursuant to 28 U.S.C. § 1331. Presently before the court are the parties' cross-motions for summary judgment and plaintiff's motion for representation by counsel. (D.I. 30, 32, 25) For the reasons that follow, the court grants defendants' motion for summary judgment, denies plaintiff's cross-motion for summary judgment, and denies plaintiff's motion for representation by counsel.

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[1]Plaintiff named the above-listed defendants in the instant suit based upon their respective positions at Delaware Correctional Center at the time of the alleged constitutional violations. Plaintiff alleges that B. Oney worked in the prison mail room and that John Walsh "creat[ed] and maintain[ed] . . . a policy under which unconstitional violations occurred." D.I. 36 at 2-3. Joe Hudson served as the mail room supervisor, Betty Burris served as the deputy prison warden, and Robert Snyder served as the prison warden. (D.I. 33 at 4-5)

II. BACKGROUND

Plaintiff contends that prison officials repeatedly opened his legal mail without his consent and outside of his presence in May 1997, March 1998, May 1998, October 1998, March 1999, June 1999, and July 1999, thereby violating his right to confidential and uncensored communications. Plaintiff relies on Biergeu v. Reno, 59 F.3d 1445 (3d Cir. 1995), for support.

In response to defendants' motion for summary judgment, plaintiff provided copies of eight items of legal mail allegedly opened outside of his presence over the span of twenty-seven months. Specifically, this legal mail included: (1) a letter from Goldblum & Hess dated May 7, 1997 declining representation; (2) a returned letter from plaintiff to Thomas V. McCoy dated March 22, 1998 seeking representation; (3) a returned letter from plaintiff to Community Legal Aid Society, Inc. dated October 5, 1998 seeking representation; (4) a letter from Delaware Volunteer Legal Services, Inc. and Widener University School of Law dated October 8, 1998 declining representation; (5) a letter from the Delaware Criminal Justice Resource Center dated March 24, 1999 stating the fee to prepare a post-conviction challenge; (6) a returned letter from plaintiff to Melvin E. Soll dated June 29, 1999 seeking representation; (7) a returned letter from plaintiff to an unknown attorney dated July 8, 1999 seeking representation;

and (8) a letter from Starlite Inc. dated July 15, 1999 enumerating fees for legal services. (See D.I. 16 at ex. A)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted).

If the moving party has demonstrated an absence of material fact, then the nonmoving party "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pennsylvania Coal Ass'n v. Babbitt, 63

F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, then the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In other words, the court must grant summary judgment if the party responding to the motion fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. Omnipoint Comm. Enters., L.P. v. Newtown Township, 219 F.3d 240, 242 (3d Cir. 2000) (quoting Celotex, 477 U.S. at 323).

IV. DISCUSSION

The Supreme Court has noted that "prison walls do not form a barrier separating prison inmates from the protections of the Constitution." Turner v. Safley, 482 U.S. 78, 84 (1987). See also Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974) ("There is no iron curtain drawn between the Constitution and the prisons of this country"). The Supreme Court also has observed that prison walls do not "bar free citizens from exercising their own constitutional rights by reaching out to those on the 'inside.'"

Thornburgh v. Abbott, 490 U.S. 401, 407 (1989). Consequently, the Supreme Court has recognized that persons convicted of serious crimes and confined to penal institutions retain numerous rights, including the right to petition the government for the redress of grievances, Johnson v. Avery, 393 U.S. 483 (1969); the right to be free from racial segregation, Lee v. Washington, 390 U.S. 333 (1968); the right to due process, Wolff, supra; the right to exercise substantial religious freedom, Cruz v. Beto, 405 U.S. 319 (1972); O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987); the right of meaningful access to the courts, Bounds v. Smith, 430 U.S. 817 (1977); and the right of free speech, Abbott, 490 U.S. at 410, n.9. Additionally and of importance to the case at bar, the Supreme Court has treated interference with mail as implicating the First Amendment right to free speech. See Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 69 &n.18 (1983); Blount v. Rizzi, 400 U.S. 410, 416 (1971); Lamont v. Postmaster General, 381 U.S. 301, 307-08 (1965). Prisoners, therefore, clearly do not forfeit their First Amendment right to use the mail system. See Bieregu, 59 F.3d at 1452.

Nevertheless, the Supreme Court has also recognized that the rights of prisoners "must be exercised with due regard for the 'inordinately difficult undertaking' that is modern prison administration." Abbott, 490 U.S. at 407 (quoting Turner, 482 U.S. at 85). Prison officials must weigh the need for internal

order and security against the rights of prisoners, as well as the constitutional rights afforded "those on the 'outside' who seek to enter that environment, in person or through the written word." Abbott, 490 U.S. at 407. Thus, courts have been called upon to review the balance struck by prison officials between the penal institution's need to maintain security within its walls and the rights of prisoners and non-prisoners.

With this background in mind, the court considers plaintiff's legal mail claim. In Bieregu, 59 F.3d at 1448, the plaintiff claimed that prison officials violated his right to access to the courts by repeatedly opening his legal mail outside his presence. The Third Circuit rejected the government's argument that the plaintiff was required to show that he was "actually denied" access to the courts. Instead, the Third Circuit distinguished "ancillary" aspects of court access from "central" aspects of court access and held that claims stemming from denial of "ancillary" aspects required actual injury, while claims arising from denial of "central" aspects did not require actual injury. Id. at 1455. The Third Circuit concluded that

> repeated violations of the confidentiality of a prisoner's incoming court mail are more central than ancillary to the right of court access, and thus no showing of actual injury is necessary for plaintiff to establish that the right has been infringed. We are satisfied that a practice of opening court mail outside an inmate's presence implicates a core aspect of the right.

Id. Therefore, the Third Circuit held that actual injury is not required in cases where a prisoner's legal mail is opened repeatedly outside of his presence.

Shortly after the Bieregu decision, the Supreme Court considered the "actual injury" requirement in a right to court access case. See Lewis v. Casey, 518 U.S. 343 (1996). In Lewis, prisoners filed a class action civil rights lawsuit against the State of Arizona Department of Corrections alleging that prison officials violated their constitutional right of access to the courts because the prison library was inadequate. Id. at 346. The Supreme Court rejected the "ancillary" versus "central" analysis and, instead, imposed an unqualified duty on inmates to show actual injury, such as the loss or rejection of a legal claim. Id. at 351. Writing for the majority, Justice Scalia explained:

> The requirement that an inmate alleging a violation of Bounds must show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches. It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution.

Id. at 349 (internal citations omitted).

The court finds that plaintiff's reliance on Bieregu is misplaced because, as the Third Circuit recognized in Oliver v.

Fauver, 118 F.3d 175, 178 (3d Cir. 1997), Lewis effectively overruled Bieregu. Under the actual injury requirement of Lewis, the court agrees with defendants that plaintiff's claim cannot survive the instant motion for summary judgment. Taking plaintiff's pleadings and motion for summary judgment in a light most favorable to him, the record does not show that plaintiff has suffered any injury as a result of the alleged interference with his legal mail. Plaintiff specifically denied any physical injury in his deposition testimony. (See D.I. 33, ex. A at 33) At most, plaintiff contends that he suffered an emotional injury, to wit, "I was really upset and emotional about this because it had to do with my legal case." (Id.) The court notes, however, the such emotional injury is an abstraction, unsupported by any medical evidence. As such, the court finds that plaintiff's emotional state is not a cognizable injury under the standard set forth in Lewis.

Moreover, the court substantiates its conclusion by noting that the Third Circuit reached the same conclusion in Oliver, a case with facts analogous to those at bar. The plaintiff in Oliver claimed that prison officials opened his outgoing mail on at least one occasion. Oliver, 118 F.3d at 176. The Third Circuit observed that the plaintiff's "papers addressed to the New Jersey Superior Court did arrive, as evidenced by the fact that his appeal was considered and adjudicated by that court. In

addition, the district court received correspondence from [plaintiff] and considered the arguments raised therein." Id. at 178. Consequently, the Third Circuit held that "[b]ecause [the plaintiff] was not prejudiced by the [d]efendants' alleged intereference with his mail, the district court properly granted summary judgment in favor of the [d]efendants." Id. Applying the reasoning of Third Circuit, the court finds no evidence at bar to link the interference with plaintiff's legal mail and his attempt to secure legal representation, the subject of his allegedly opened legal mail. As a result, the court, like the Third Circuit, cannot conclude that prison officials prejudiced plaintiff's efforts to pursue his legal claims. Accordingly, the court grants defendants' motion for summary judgment and denies plaintiff's cross-motion for summary judgment.[2]

V. CONCLUSION

For the reasons stated above, the court grants defendants' motion for summary judgment and denies plaintiff's cross-motion for summary judgment. The court also denies plaintiff's motion for representation by counsel as moot. An appropriate order shall issue.

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[2]In light of the decision to grant summary judgment in favor of defendants, the court denies plaintiff's motion for representation by counsel as moot.

Because the court disposed of the instant case based upon the "actual injury" requirement, the court need not discuss the remaining grounds for summary judgment enumerated in defendants' brief.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JOHN TAYLOR,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 00-557-SLR
	)	
B. ONEY, JOHN WALSH, JOE HUDSON, BETTY BURRIS, and ROBERT SNYDER,	)	
	)	
	)	
Defendants.	)	

O R D E R

At Wilmington, this 24th day of March, 2004, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendants' motion for summary judgment (D.I. 32) is granted.

2. Plaintiff's cross-motion for summary judgment (D.I. 30) is denied.

3. Plaintiff's motion for representation by counsel (D.I. 25) is denied.

4. The Clerk of Court is directed to order judgment in favor of defendants and against plaintiff.

Sue L. Robinson
United States District Judge